(1)

C/ Pol 03

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: C.G.

W.P. NO.2939 OF 2005

WRIT PETITION UNDER ARTICLE 227, OF CONSTITUTION OF INDIA

Petitioners:
Defendants

1) Krishna Kumar Dubey,S/o Late Shri Loknath Dubey,aged 53 years,

2) Kailash Chandra Dubey S/o Late Shri Ratanlal Dubey,aged 43 years,

3) Mahesh Dubey, S/o Late Shri Balbhadra Dubey, aged 55 years,

4) Shivkumar Dubey S/o Late Shri Babulal Dubey, aged 47 years,

5) Narayan Prasad Dubey S/o Late Shri Gorelal Dubey, aged 36 years,

6) Manoj Kumar Dubey S/o Late Shri Kanshi Prasad Dubey, aged 30 years,

7) Smt.Vimla Dubey Wd/o Late Shri Kanshi Prasad Dubey,aged 50 years,

All Brahmans by caste R/o Mohalla Mahamayapara Ratanpur,Tah.Kota, District Bilaspur (C.G.)

P.R. No. 3079/05 Presented by Shri K.S. Ameria dated 8/8/05

शपथ आयुक्त बिलासपुर (छ.ग.)

Vs

Respondents:
Plaintiffs

Smt. Laxmi Bai aged 70 years,Wd./o Late Shri Babuji Dubey Caste Hindu Brahman , Manager & Pujari Buddheshwar Mahadeo (Buhdha Mahadeo) Mandir Ratanpur, R/o Mohalla Mahamai Para Ratanpur, Tahsil Kota, District Bilaspur (C.G.)
Through – Exclusive Power of Attorney Holder Govind Prasad Tiwari, aged 45 years S/o Shri Rewa Prasad Tiwari, R/o Mohalla Mahamayapara Ratanpur, Tahsil Kota,
District Bilaspur (C.G.)

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2939 of 2005

Krishna Kumar Dubey

-Versus-

Smt. Laxmi Bai

Post for order on 1st December ~~November~~, 2005.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2939 of 2005

75

Krishna Kumar Dubey

-Versus-

Smt. Laxmi Bai

Mr. Sanjay S. Agarwal, Advocate for the petitioners.

Mr. Anand Kumar Tiwari, Advocate for the Respondent.

ORDER

(1st December 2005)

By Justice Satish K. Agnihotri.

1. The present petition under Article 227 of the Constitution of India is filed by the defendants/petitioners impugning the order dated 29.6.2005 passed by the Third Additional District Judge, Bilaspur in Misc. Civil Appeal No. 27/2005.

2. The undisputed facts in nutshell are that the plaintiff/respondent filed a civil suit for permanent injunction against defendants/petitioners from interfering with performance of Pooja – Archna of Budheshwer Mahadeo (Budha Mahadeo) temple, situated at Ratanpur, Tahsil- Kota, District- Bilaspur.

3. The plaintiff/respondent further filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure for grant of temporary injunction against the defendants/petitioners. The Third Civil Judge Class-II, Bilaspur after having considered the submissions made by the parties and documents filed by both the parties came to the conclusion that the document dated 16.3.1946 executed by Shri Babuji Dubey, husband of the plaintiff/respondent, agreement for Panch Faishla dated 22.2.1991 and Panch Faishla

dated 13.3.1991, and the certificate issued by the Nagar Panchayat, Ratanpur prima-facie established that Shri Babuji Dubey, husband of the plaintiff/respondent had been performing worship (pooja-archana) along with defendants/petitioners in the disputed temple i.e. temple of Budheshwer Mahadeo (Budha Mahadeo). The timing of worship was decided as per Panch Faishla dated 13.3.1991. The Third Civil Judge Class-II, Bilaspur accordingly held that the plaintiff/respondent and the defendants/petitioners were jointly entitled to perform pooja – archna on the said temple. Thus, the application of the plaintiff/respondent under Order 39 Rules 1 and 2 of the C.P.C. for grant of temporary injunction that the plaintiff/respondent alone was entitled to perform pooja-archna in the temple was rejected by the order dated 11.5.2005.

4. Being aggrieved the plaintiff/respondent filed a Miscellaneous Civil Appeal being M.C.A. No. 27/95 in the Court of Third Additional District Judge Bilaspur under Order 43 Rule 1 of the Code of Civil Procedure. The Additional District Judge without considering the documents dated 16.3.1946 executed by Shri Babuji Dubey, husband of the plaintiff/respondent, agreement for Panch Faishla, Panch Faishla and other documents (supra) relied on by the Court below and without discussing the material on record, recorded a contrary finding and set aside the order dated 11.5.2005 passed by the Third Civil Judge Class-II. The Additional District Judge held that the plaintiff/respondent had proved her case prima-facie and further keeping in view the balance of convenience in her favour and irreparable loss which might be caused to the plaintiff, allowed the Misc. Civil Appeal No. 27/95, filed by the plaintiff/respondent by impugned order dated 29.6.2005. As a result, the application under

77

Order 39 Rule 1 and 2 of the Code of Civil Procedure for temporary injunction filed by the plaintiff was allowed.

5. Mr. Sanjay S. Agarwal, learned counsel appearing for the defendants/petitioners submitted that the First Appellate Court, while passing the impugned order, had not considered and discussed the relevant documents namely the document dated 16.3.1946 executed by Shri Babuji Dubey, husband of the plaintiff/respondent, agreement for Panch Faishla dated 22.2.1991, Panch Faishla dated 13.3.1991, and the certificate issued by the Nagar Panchayat, Ratanpur, which were considered by the Third Civil Judge Class-II. The trial Court came to the conclusion that the plaintiff/respondent had not made out a prima facie case that she alone was entitled to perform pooja-archna in the temple and to look after management of the temple. It was further contended that the first appellate Court had set aside the finding recorded and the order dated 11.5.2005 passed by the trial court without looking into the relevant material, balance of convenience and irreparable loss caused to the defendants/petitioners.

6. Learned counsel for the petitioners relied on decisions of the Supreme Court in Sree Jain Swetambar Terapanthi Vid(S) V. Phndan Singh and others, [AIR 1999 S.C. 2322] and Deva(Dead) through Lrs Vs. Sajjan Kumar (Dead) by Lrs. [(2003) 7 SCC 481].

7. Per contra, Shri Anand Kumar Tiwari, learned counsel appearing for the plaintiff/respondent submitted that the first appellate Court, though while recording its finding had not referred to the above stated various documents, however, the first appellate Court had considered all the documents as stated above while coming to the conclusion that the plaintiff/respondent alone was entitled to perform pooja in the temple and to look after management of the temple. The appellate

78

Court had rightly set-aside the finding recorded by the trial Court and allowed the appeal.

8. Learned counsel further contended that the scope of this Court in exercise of its power of judicial supervision under Article 227 of the Constitution of India is limited. The High Court should not go into the factual appreciation of evidence and if two plausible views are possible, the High Court should restrain itself to give its decision in favour of one view. In support of his contention, learned counsel relied on the decision of the Madhya Pradesh High Court in State of M.P. and another Vs. Uttam Chand and others [2000 (2) JLJ 143], decisions of the Supreme Court in Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, [A.I.R. 1987 S.C. 117], Mrs. Rana Drego Vs. Lalchand Soni etc. [A.I.R. 1998 S.C. 1990], Surya Dev Rai Vs. RamChander Rai & others, [A.I.R. 2003 S.C. 3044].

9. I have heard learned counsel for the parties and perused the material records. It is well nigh settled, in view of the various decisions cited above, that the High Court while exercising its supervisory jurisdiction under Article 227 of the Constitution of India has limited jurisdiction that unless there is any grave miscarriage of justice or flagrant violation of law or the Court has mis-directed its order on law and fact, the High Court should restrain itself from interfering with such finding made by the courts below. In Waryan Singh and another Vs. Amarnath and another [A.I.R. 1954 S.C. 215] the Supreme Court held that the power of superintendence conferred by Article 227 of the Constitution of India be exercised most sparingly and only in appropriate cases in order to keep the subordinates courts within the bounds of their authority and not for correcting mere errors.

10. In case of Sree Jain Swetambar Terapanthi Vid (S) (supra), cited by learned counsel for the petitioner in para-12 has held as under:-

79

"It may be pointed out that it is one thing to conclude that the trial Court has not recorded its prima facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that trial Court has gone wrong in recording the prima facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. In the first situation, the appellate Court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding. The High Court proceeded to set aside the order of the trial Court on the first ground ignoring the aforementioned findings of the trial Court, the order under appeal is, therefore, unsustainable."

11. In Surya Dev Rai's case (supra), cited by learned counsel for the respondents, the Supreme Court reiterated the legal position of law as settled earlier by the Supreme Court in catena of decisions that the High Court in supervisory jurisdiction would not convert itself into a court of appeal and indulge in the re-appreciation of evidence or evaluation of errors or correct errors in drawing inference or correct mere technical or formal errors.

12. In the present case, the appellate Court has neither considered nor discussed all the documents which were produced while coming to the conclusion that the plaintiff/respondent alone was entitled to perform pooja-archna in the temple and to look after the management of the temple. The trial Court had considered in detail and came to the prima facie satisfaction, keeping in view, the balance of convenience and irreparable loss likely to be caused to either of the parties that the

80

plaintiff/respondent as well as the defendants/petitioners are jointly responsible for performance of pooja-archna as it has been decided long back in Panch Faishla dated 13.3.1991. Hence, the view taken by the appellate Court is not based on the appreciation of evidence and contrary to materials on record.

13. Accordingly, the impugned order dated 29.6.2005 passed by the Third Additional District Judge, Bilaspur in Misc. Civil Appeal No. 27/2005 is set aside and the order dated 11.5.2005 passed by the Third Civil Judge Class-II in Civil Suit No. 74-A/2005 is restored.

The petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur